

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

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FILE: B-133142  
B-178696

DATE: September 6 1978

MATTER OF: Survivor Benefit Plan - Waiver of  
erroneous annuity payments

DIGEST: The Department of Defense suggests waiver under 10 U.S.C. 1453 (1976) of overpayments of Survivor Benefit Plan (SBP) annuities made to a large group of annuitants over a nearly 5-year period due to administrative failure to increase the reduction in annuities caused by a change in the Social Security law. Since the annuitants are without fault, and in the circumstances recovery of the overpayments would be contrary to the purposes of the SBP, the Comptroller General concurs in waiver of the overpayments.

This action is in response to a letter dated June 24, 1978, from the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics), requesting concurrence by this Office with the proposed action of the Department of Defense to waive recovery of overpayments of annuities made to certain surviving spouses under the Survivor Benefit Plan (SBP), 10 U.S.C. 1447-1455 (1976), as a result of administrative error.

The SBP requires a statutory reduction in annuities payable to widows or widowers based on their entitlement to Social Security benefits attributable to the deceased member's military service (10 U.S.C. 1451(a)). At the time of enactment of the SBP (September 21, 1972), the Social Security laws maximized surviving spouse benefits at 82.5 percent of the amount the deceased worker would be entitled to if still living. Effective January 1, 1973, the Social Security laws were amended by Public Law 92-603 to change that amount to up to a maximum of 100 percent of the deceased worker's entitlement. Department of Defense regulations (DOD Instruction 1332.27), did not take the Social Security benefit change into account before it was issued on January 4, 1974. As a result, SBP payments made after January 1, 1973, to such annuitants, who were also entitled to Social Security benefits, were not sufficiently reduced. This resulted in overpayments of annuities until October 1977, when the Department of Defense took corrective action in response to our letter report, B-133142, September 1, 1977, which identified the administrative error. The Assistant Secretary states that

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the total amount of the overpayments is approximately \$928,000, with the estimated number of affected annuitants being 3,404. He has also submitted a schedule showing the estimated monthly and average amounts of the overpayments by armed service, and other pertinent information.

The Assistant Secretary states that the error was administrative and that there is no evidence of fraud, misrepresentation, fault or lack of good faith on the part of the annuitants. Further, it is the position of the Department of Defense and each of the service Secretaries that waiver should be granted since it is their view that recovery would be contrary to the purpose of the SBP, and it would be against equity and good conscience to require recovery from the affected annuitants, to issue Notices of Exception, or to raise charges in disbursing officers' accounts. Based on that, our concurrence in waiving recovery of the overpayments is requested.

Concerning the recovery of erroneous annuity payments, 10 U.S.C. 1453 provides in part that:

"\* \* \* recovery is not required if, in the judgment of the Secretary concerned and the Comptroller General, there has been no fault by the person to whom the amount was erroneously paid and the recovery would be contrary to the purposes of this subchapter or against equity and good conscience."

In this case it is apparent that there was no fault on the part of the annuitants who received the overpayments. The overpayments resulted from error on the part of the services in administering the offsets required under the complex SBP and Social Security laws, and it is highly unlikely that any of the annuitants were aware that they were receiving overpayments. In the circumstances we believe that it may be said that each of the individuals involved was without fault even though a specific review of each case has not been undertaken.

Concerning whether recovery would be contrary to the purposes of the SBP or against equity and good conscience, in 55 Comp.

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GPO, 1238 (1976), we indicated that the criteria for waiver under 10 U.S.C. 1453 should be similar to the criteria for waiver of erroneous payments of pay and allowances under 10 U.S.C. 2774 (1976) and 5 U.S.C. 5584 (1976). We also stated that a finding of hardship in each case was not necessary for waiver.

Since the requirements for waiver have been met, we concur in the Department of Defense position that recovery of these overpayments should not be made. This decision will serve as our concurrence in waiver of overpayments of annuities in individual cases arising out of this matter without further referral to us.

  
Deputy Comptroller General  
of the United States